



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 7

March 20, 2007

### **S. Con. Res. 21 – Concurrent Budget Resolution for Fiscal Year 2008**

Calendar No. 82

*Reported on March 16, 2007 as an original concurrent resolution by the Senate Budget Committee, by a vote of 12 to 11; no written report.*

#### **Noteworthy**

**As approved by the Senate Budget Committee, S. Con. Res. 21 sets total spending in fiscal year 2008 at \$2.927 trillion and total revenues at \$2.678 trillion.**

- **Tax Increases:** S. Con. Res. 21 assumes \$916 billion more in taxes over five years than the CBO baseline. Presumably, a significant portion of this revenue will come from allowing the 2001 and 2003 tax relief to expire.
- **Budget Enforcement:** S. Con. Res. 21 creates eight new budget points of order that are designed to reduce the deficit through tax increases rather than spending restraint. Of these, four are new points of order that would require 60-votes (to waive each point of order) to extend or make permanent the 2001 and 2003 tax relief. Only a simple majority is needed to raise taxes.
- **Discretionary Spending:** S. Con. Res. 21 provides \$948.8 billion (after cap adjustments) in discretionary budget authority for FY 2008, which is \$16 billion above the President's request. S. Con. Res. 21 also provides for \$2 billion more in advance appropriations than the President's budget. Within this allocation, many domestic spending programs are increased. The budget fully funds the President's defense request and the FY08 and FY09 emergency supplementals.
- **Medicare Spending:** S. Con. Res. 21 includes \$389.969 billion for Medicare in 2008, an increase of \$24.817 billion (+6.8 percent) over 2007. The average annual increase in Medicare spending during the five-year budget window is 5.3 percent.
- **Reserve Funds:** S. Con. Res. 21 creates 25 deficit-neutral reserve funds. The Chairman of the Budget Committee may adjust committee allocations if legislation meets the requirements of the reserve fund and is deficit-neutral. These reserve funds allow for tax increases to offset spending increases.
- **Reconciliation:** S. Con. Res. 21 does not include any reconciliation instructions.

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## **Highlights**

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### **Budget Enforcement**

Enforcement of the budget resolution is based primarily upon 60-vote budget points of order and reconciliation procedures. The creation of these enforcement tools are not changes to law but are changes to Senate rules. S. Con. Res. 21 includes eight new budget points of order (and extends certain existing ones). Sections 201, 203, and 205 expire in ten years. Sections 202, 204, 206, and 209 have no expiration dates. An expiration date is not relevant for Sections 207 and 208.

#### **Pay-as-you-go (Section 201)**

S. Con. Res. 21 would change the way the pay-as-you-go (PAYGO) rule operates. The revised rule establishes a 60-vote point of order against legislation that would worsen the deficit relative to the CBO baseline for any of the following time periods: FY07, FY08, the five-year period from FY08-12, or the five-year period from FY13-17.

Section 201 also replaces the current pay-as-you-go rule, created in the FY04 Budget Resolution. The rule established a 60-vote point of order against legislation that would increase the deficit beyond the level assumed in the most recently agreed to conference report on the budget, currently the FY06 budget resolution.

The key difference between current PAYGO and the proposed PAYGO is that the current PAYGO allows for deficits up to the amount assumed in the budget resolution. The proposed PAYGO does not allow for any deficit beyond the CBO baseline. For more information on PAYGO, please see “Democrats’ PAYGO will not Restore Fiscal Responsibility,” January 17, 2007.

The practical effect of this change is that Congress cannot protect the extension of tax relief from PAYGO in the budget resolution.

#### **Limitation of Reconciliation Legislation (Section 202)**

S. Con. Res. 21 creates a 60-vote point of order against reconciliation instructions that would increase the deficit or reduce a surplus. Had such a rule been in existence in 2001 or 2003, the Senate might not have been able to pass the President’s 2001 and 2003 tax cuts using reconciliation.

#### **Long-term Deficits (Section 203)**

S. Con. Res. 21 repeals the current point of order against long-term spending (60 votes to waive) and replaces it with a 60-vote point of order against long-term deficits. The point of order would lie against any measure that increases the deficit more than \$5 billion over any of the four ten-year periods over 2018-2057. Such a rule allows for increased spending to be offset with increased revenues.

### **Emergency Designation (Section 204)**

S. Con. Res. 21 creates a new 60-vote point of order against emergency designations. The new rule exempts all emergency spending from PAYGO and limitations set in the budget resolution. Emergency requirements, as designated by Congress, must meet the following five standards: necessary, sudden, urgent, unforeseen, and not permanent.

### **Extension of Existing Points of Order (Section 205)**

S. Con. Res. 21 changes the expiration date (from September 30, 2010 to September 30, 2017) for the 60-vote waiver threshold for two existing points of order: 1) the unfunded mandates point of order and 2) the spending, revenue or debt legislation without a budget resolution point of order. The unfunded mandates point of order prohibits consideration of any committee-reported legislation, except reconciliation bills, unless the CBO federal mandates estimate has been printed in the committee report or the Congressional Record and contains an intergovernmental mandate in excess of the statutory limit (\$50 million per year as adjusted for inflation; currently \$66 million for FY07) for the first fiscal year or any of the following four fiscal years. The spending, revenue, or debt legislation rule prohibits consideration of any spending, revenue, or debt legislation until the budget resolution for the upcoming fiscal year has been agreed to.

### **Advance Appropriations (Section 206)**

As approved by the Senate Budget Committee, S. Con. Res. 21 extends the current advance appropriations point of order. The point-of-order prohibits the consideration of advance appropriations, except for those provided for FY09-FY10 for specified accounts (including the Corporation for Public Broadcasting), which in total cannot exceed \$25.158 billion. This amount is \$2 billion above what the limitation has been in recent years.

### **Discretionary Spending Limits (Section 207)**

As approved by the Senate Budget Committee, S. Con. Res. 21 resurrects an enforcement tool to set discretionary spending limits for FY07 and FY08. The discretionary spending limit is set at \$951.14 billion in budget authority for FY07 and \$942.31 billion for FY08. This amount is anticipated to adjust up to the ultimate level of \$948.8 billion, which is \$16 billion above the President's request. These spending limits may be modified for matters relating to: continuing disability reviews and SSI redeterminations, health care fraud and abuse, unemployment insurance improper payments, Walter Reed, IRS tax enforcement, wildland fire suppression, and the global war on terror. Emergency spending would be exempt from these limits.

### **Repeal of Previous Budget Enforcement Tools (Section 201, 203, 204, 206, 208)**

As approved by the Senate Budget Committee, S. Con. Res. 21 repeals previous budget enforcement tools, including last year's deeming resolution, which set a 302(a) level— a discretionary top line— for FY07. The specific points of order repealed are the following sections from the FY06 Budget Resolution, H. Con. Res. 95: Sections 401 (advance appropriations), 402 (emergency legislation), 407 (long-term spending), and 505 (PAYGO). All four aforementioned enforcement tools were replaced with a related budget rule.

## Social Security Trust Fund (Section 209)

As approved by the Senate Budget Committee, S. Con. Res. 21 creates a new 60-vote point of order rule related to Social Security trust funds. The new rule prohibits the consideration of any mandatory spending or revenue legislation that would increase the on-budget deficit in any fiscal year until the President submits legislation to Congress and Congress enacts legislation which would restore 75-year solvency to the Social Security trust funds.

## No Reconciliation Instructions

S. Con. Res. 21 does not contain any reconciliation instructions.

## Resolution Provisions

### Total Non-Emergency Spending (in billions):

| Function | Title   | FY07<br>Enacted | FY08<br>President's<br>Request | FY08<br>Democrat<br>Budget |
|----------|---|-----------------|--------------------------------|----------------------------|
| 050      | National Defense  | 456             | 507                            | 507                        |
| 150      | International Affairs                                   | 29              | 36                             | 34                         |
| 250      | General Science, Space, and Technology                  | 25              | 27                             | 27                         |
| 270      | Energy  | 3               | 3                              | 3                          |
| 300      | Natural Resources and Environment                       | 31              | 31                             | 33                         |
| 350      | Agriculture   | 26              | 21                             | 20                         |
| 370      | Commerce and Housing Credit                             | 10              | 10                             | 11                         |
| 400      | Transportation  | 81              | 80                             | 84                         |
| 450      | Community and Regional Development                      | 16              | 13                             | 15                         |
| 500      | Education, Training, Employment, and Social<br>Services | 93              | 83                             | 94                         |
| 550      | Health  | 268             | 282                            | 289                        |
| 570      | Medicare  | 365             | 386                            | 390                        |
| 600      | Income Security   | 360             | 378                            | 379                        |
| 650      | Social Security   | 588             | 615                            | 615                        |
| 700      | Veterans Benefits and Services                          | 74              | 81                             | 85                         |
| 750      | Administration of Justice                               | 44              | 46                             | 47                         |
| 800      | General Government                                      | 18              | 19                             | 19                         |
| 900      | Net Interest  | 237             | 256                            | 256                        |
| 920      | Allowances  | 1               | 0                              | -7                         |
| 950      | Undistributed Offsetting Receipts                       | -82             | -84                            | -85                        |
| Total    |   | 2,643           | 2,790                          | 2,815                      |

## **Discretionary Spending**

The budget provides a binding 302(a) budget authority and outlay allocation to the Appropriations Committee.<sup>1</sup> The 302(a) number is the top level for discretionary spending in a given year. As passed by the Budget Committee, S. Con. Res. 21 provides a 302(a) allocation of \$948.8 billion in budget authority after cap adjustments. This figure is the only binding number that is forwarded to the Appropriations Committee.

## **Reserve Funds**

In general, a reserve fund permits the Chairman of the Committee on the Budget to increase the section 302(a) allocation and other appropriate levels set out in this resolution once certain conditions have been met. The authority to make these adjustments is solely within the discretion of the Chairman and may be made when the committee of jurisdiction reports a measure that satisfies all of the conditions set out in the reserve fund.

Generally, these funds allow for increased spending as long as the spending is offset with tax increases or spending cuts elsewhere. As reported out of committee, S. Con. Res. 21 includes 25 deficit-neutral reserve funds compared to 12 reserve funds (as reported out of committee) last year.

If all reserve funds were triggered, total spending would increase by \$200 billion, financed by tax increases.

### **Reserve Fund for SCHIP (Section 301)**

Section 301 provides a deficit-neutral reserve fund for legislation to reauthorize the State Children's Health Insurance Program (SCHIP), up to \$35 billion. The legislation must maintain coverage for those currently enrolled in SCHIP, continue efforts to reach uninsured children who are currently eligible for SCHIP or Medicaid but not enrolled, and support states in their efforts to cover more children. In addition to the reserve fund, S. Con. Res. 21 assumes \$15 billion in new SCHIP spending on top of the \$35 billion, which must be offset by spending reductions, for a total of \$50 billion.

### **Reserve Fund for wounded service members (Section 302)**

Section 302 provides a reserve fund for legislation that improves the medical care of and disability benefits for wounded or disabled military personnel.

### **Reserve Fund for tax relief (Section 303)**

Section 303 provides a deficit-neutral reserve fund for legislation that would provide tax relief, including extensions of expiring tax relief.

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<sup>1</sup> The Appropriations Committee subsequently breaks the 302(a) number into twelve 302(b) allocations, which are the allocations to the individual Appropriations Subcommittees.

**Reserve Fund for comparative effectiveness (Section 304)**

Section 304 provides a deficit-neutral reserve fund for legislation that establishes a new federal or public-private initiative for comparative effectiveness research.

**Reserve Fund for higher education (Section 305)**

Section 305 provides a deficit-neutral reserve fund for legislation that would make higher education more accessible and more affordable.

**Reserve Fund for the Farm Bill (Section 306)**

Section 306 provides a deficit-neutral reserve fund, up to \$15 billion, for legislation that reauthorizes the Food Security and Rural Investment Act of 2002, strengthens agriculture economies, provides agriculture-related tax relief, or improves our environment by reducing our Nation's dependence on foreign sources of energy.

**Reserve Fund for energy legislation (Section 307)**

Section 307 provides a deficit-neutral reserve fund for legislation that reduces our Nation's dependence on foreign sources of energy, expands production and use of alternative fuels, promotes renewable energy development, or rewards conservation and efficiency.

**Reserve Fund for Medicare (Section 308)**

Section 308 provides for three separate deficit-neutral reserve funds for legislation that repeals the non-interference provision (drug-price negotiation) of Medicare Part D, increases the reimbursement rate for physician services, and makes improvements to Medicare Part D for an amount up to \$5 billion. CBO scores the repeal of the non-interference provision as budget neutral, which would result in no savings. Increasing the reimbursement rate for physicians necessarily increases Part B premiums seniors pay monthly.

**Reserve Fund for small business health insurance (Section 309)**

Section 309 provides a deficit-neutral reserve fund for legislation that makes health insurance coverage more affordable to small businesses.

**Reserve Fund for Secure Rural Schools and Community Self-Determination Act (Section 310)**

Section 310 provides a deficit-neutral reserve fund for legislation that provides for the reauthorization of the Secure Rural Schools and Community Self-Determination Act, for an amount up to \$440 million.

**Reserve Fund for terrorism risk insurance (Section 311)**

Section 311 provides a deficit-neutral reserve fund for legislation that provides for a continued Federal role in ensuring the availability of terrorism insurance after the expiration of the Terrorism Risk Insurance Extension Act.

**Reserve Fund for affordable housing (Section 312)**

Section 312 provides a deficit-neutral reserve fund for legislation that would establish an affordable housing fund financed by the housing government-sponsored enterprises.

**Reserve Fund for Bonneville Power Administration (BPA) (Section 313)**

Section 313 provides a deficit-neutral reserve fund for legislation that prohibits the BPA from making early payments on its Federal Bond Debt to the Treasury.

**Reserve Fund for Indian claims settlement (Section 314)**

Section 314 provides a deficit-neutral reserve fund for legislation that creates an Indian claims settlement fund and extinguishes all claims arising before the date of enactment for various losses, for an amount up to \$8 billion.

**Reserve Fund for Food and Drug Administration (FDA) (Section 315)**

Section 315 provides a deficit-neutral reserve fund for legislation that authorizes the FDA to regulate tobacco products and assess user fees on tobacco manufacturers and importers to cover the cost of the FDA regulatory activities.

**Reserve Fund for health care reform (Section 316)**

Section 316 provides a deficit-neutral reserve fund, after an SCHIP reauthorization bill is enacted, for legislation that improves health care and provides quality health insurance for the uninsured and underinsured.

**Reserve Fund for veterans' benefits (Section 317)**

Section 317 provides a deficit-neutral reserve fund for legislation that would enhance benefits for veterans.

**Reserve Fund for long-term care (Section 318)**

Section 318 provides a deficit-neutral reserve fund for legislation that would improve long-term care, enhance the safety and dignity of patients, encourage appropriate use of institutional and non-institutional care, promote quality care, and provide for the cost-effective use of public resources.

### **Reserve Fund for health information technology (Section 319)**

Section 319 provides a deficit-neutral reserve fund for legislation that provides incentives for the adoption of modern information technology to improve quality and protect privacy in health care. Section 319 also provides a deficit-neutral reserve fund for legislation that provides for payments that are based on adherence to accepted clinical protocols identified as best practices.

### **Reserve Fund for child care (Section 320)**

Section 320 provides a deficit-neutral reserve fund for legislation that provides up to \$5 billion for child care entitlement to states.

### **Reserve Fund for comprehensive immigration reform (Section 321)**

Section 321 provides a deficit-neutral reserve fund for legislation that provides for comprehensive immigration reform, provides for increased interior enforcement through an effective electronic employment verification system, and provides for increased border security and enhanced information technology systems.

### **Reserve Fund for mental health parity (Section 322)**

Section 322 provides a deficit-neutral reserve fund for legislation that provides parity between insurance coverage of mental health benefits and benefits for medical and surgical services.

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## **Background**

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As Congress's blueprint for federal spending, the budget resolution sets binding limits on discretionary and mandatory spending levels and binding floors for revenue collections. For discretionary spending, the budget resolution allocates overall spending levels to the House and Senate Appropriations Committees through its 302(a) allocations.

The budget resolution's provisions are enforced through internal Senate rules and the Budget Act. The spending and revenue levels adopted in the resolution are enforced through 60-vote points of order.

The budget resolution may direct authorizing committees to make changes in mandatory spending programs or tax policy through reconciliation instructions. In past resolutions, spending reduction instructions have been directed to the Finance, Agriculture, Commerce, Banking, HELP, and other authorizing committees. Revenue-change instructions have been directed to the Finance Committee.

This budget does not include any reconciliation instructions.



## **Procedures**

Under the Budget Act of 1974, as amended, a budget resolution is a privileged piece of legislation. It is not subject to filibuster, and debate time is limited to 50 hours, equally divided. There are sub-limits within the overall time limitation, such as a two-hour cap on any first-degree amendment and a one-hour limit on any second-degree amendment, debatable motion, or appeal. Time can be yielded from the overall allocation. If time is yielded back, then both sides share equally in the time that remains.<sup>2</sup> Votes do not count against this time limit, nor do quorum calls just prior to votes. [For an explanation of Budget Act points of order, see *Riddick's Senate Procedure*, revised in 1992, pp. 615-618.]

Amendments to the budget resolution must be germane; otherwise, a point of order lies against the amendment, and 60 votes are required to waive the point of order. Germane amendments are those which:

- 1) strike;
- 2) increase or decrease numbers; or
- 3) add language that restricts some power in the resolution.

Debate on first-degree amendments is limited to two hours, one hour to proponents and one hour to opponents. Debate on second-degree amendments is limited to one hour, 30 minutes to proponents and 30 minutes to opponents. All debate time on a first-degree amendment must be used or yielded back before a second-degree amendment can be offered.

Debate on any motion to waive a point of order is limited to one hour, equally divided. Amendments can be offered at any time.

Once all debate time has been used or yielded back, Senators may continue to offer further amendments. No debate is in order, but roll call votes can be taken. Dozens of votes may occur with little or no explanation; this is frequently referred to as “vote-a-rama.” Once all amendments have been dispensed with, a vote for final passage occurs.

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## **Possible Amendments**

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During the committee markup, 22 amendments were dispensed with. Of these amendments, nine were accepted by voice vote. The remaining 13 amendments were dispensed with by a roll call vote. Four amendments were accepted by a party-line vote, with the remaining nine defeated. Both the accepted and defeated amendments are listed. Similar amendments can be expected on the Senate floor. (Cosponsors in parentheses.)

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<sup>2</sup> For more information, see Martin Gold, “Senate Procedure and Practice,” Rowman & Littlefield Publishers, Inc. Lanham, Maryland, 2004.

### **Amendments Accepted by Voice Vote:**

**Stabenow, D-MI** (Whitehouse, Feingold, Enzi, and Ensign): Amendment to create a deficit-neutral reserve fund for legislation that provides incentives or support for the adoption of modern information technology to improve quality and protect privacy in healthcare.

**Domenici, R-NM** (Stabenow and Feingold): Amendment to create a deficit-neutral reserve fund for legislation that provides parity between health insurance coverage of mental health benefits and benefits for medical and surgical services.

**Cardin, D-MD**: Amendment to create a deficit-neutral reserve fund for legislation that would improve long-term care and enhance the safety and dignity of patients.

**Graham, R-SC**: Amendment to allow for funding increases to address problems at Walter Reed Army Medical Center and ensure funding, up to \$5 billion, for training, equipment, and force protection for service members.

**Sanders, I-VT**: Amendment to create a deficit-neutral reserve fund for legislation that would enhance benefits for veterans.

**Cornyn, R-TX**: Amendment to create a reserve fund for comprehensive immigration reform that provides for increased interior enforcement and border security.

**Cornyn, R-TX**: Amendment to increase function 500 by \$500 million in discretionary spending related to Title XX of the Social Security Act—the Social Services Block Grant (SSBG) for FY07, and offset in function 920.

### **Amendments Accepted by Roll Call Votes**

**Wyden, D-OR** (Feingold, Nelson, and Wyden): Amendment to create a deficit-neutral reserve fund to improve health care and provide quality health insurance for the uninsured and underinsured. **Amendment Accepted 12 – 11.**

**Conrad, D-ND**: Amendment to create a 60-vote point of order that prohibits consideration of any mandatory spending or revenue legislation that would increase the on-budget deficit in any fiscal year until the President submits legislation which would restore 75-year solvency to certain Social Security trust funds. **Amendment Accepted 12 – 11.**

**Sanders, I-VT**: Amendment to create a deficit-neutral reserve fund to provide up to \$5 billion for childcare entitlement to States. **Amendment Accepted 12 – 11.**

### **Amendments Defeated**

**Allard, R-CO**: Amendment to reduce spending by \$4.25 billion on programs rated ineffective by the Program Assessment Rating Tool. **Amendment Rejected 11 – 12.**

**Bunning, R-KY** (Enzi): Amendment to create a 60-vote point of order against any budget resolution that does not achieve on-budget (does not include social security) balance within five

years. Also, if CBO projects an on-budget deficit in one year, then the budget resolution must reduce budget deficits and put the budget on a path to achieve balance within five years.

**Amendment Rejected 11 – 12.**

**Enzi, R-WY** (Gregg, Sessions, Ensign, Crapo, Bunning, and Allard): Amendment to create a 60-vote point of order that prohibits consideration of any measure that would increase the direct costs to the private sector. **Amendment Rejected 11 – 12.**

**Ensign, R-NV** (Gregg, Bunning, and Graham): Amendment to include reconciliation instructions related to means-testing of Medicare Part D to reduce the deficit by \$2.8 billion over five years. **Amendment Rejected 11 – 12.**

**Ensign, R-NV**: Amendment to ensure funding for the Department of Defense within the regular appropriations process by creating a firewall between defense spending and other appropriation bills. **Amendment Rejected 11 – 12.**

**Cornyn, R-TX** (Allard, Gregg, Graham, Bunning, and Crapo): Amendment to create a 60-vote point of order that prohibits legislation that increases income tax rates. **Amendment Rejected 11 – 12.**

**Cornyn, R-TX** (Gregg and Enzi): Amendment to provide reconciliation instructions to reform entitlement programs. **Amendment Rejected 11 – 12.**

**Cornyn, R-TX**: Amendment to create a reserve fund that improves the State Children's Health Insurance Program, provided that the legislation emphasizes providing health insurance to low-income children below 200% of the federal poverty level, among other things. **Amendment Rejected 11 - 12.**

**Gregg, R-NH**: Amendment to create a special scoring rule that requires the Joint Committee on Taxation to report the amount of revenue raised from closing the tax gap and excludes such revenue from the pay-as-you-go scorecard. **Amendment Rejected 10 – 13.**

**Gregg, R-NH**: Amendment to use revenues raised by closing the tax gap for deficit reduction. **Amendment Rejected 10-13.**